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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/915,351	07/27/2001	Toshiyuki Murata	107156-00073	7210

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EXAMINER

CHAU, COREY P

ART UNIT PAPER NUMBER

2644

DATE MAILED: 03/21/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<p align="center"><b>Office Action Summary</b></p>	Application No. 09/915,351	Applicant(s) MURATA ET AL	
	Examiner Corey P Chau	Art Unit 2644	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 10 January 2005.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1, 5 and 6 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1, 5, and 6 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Claim Rejections - 35 USC § 112***

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claims 5 and 6 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

3. Claim 5 recites the limitations "the sound stream attributes" in lines 4 and 5; and "the frequency characters" in line 5. Claim 1 recites "frequency character information" and "sound stream attribute" and Claim 5 recites "plurality of sound stream attributes" and "plurality of frequency character". There is insufficient antecedent basis for this limitation in the claim.

4. Claim 6 recites "An audio reproducing apparatus according to claim 2", which has been cancel. Therefore it is unclear to the Examiner what is the dependency of Claim 6. For examining purposes, Claim 6 is depend on Claim 1. Note, any changes to the dependency of Claim 6 would change the scope of the claim and require further consideration.

5. Claim 6 recites the limitation "the selection storing device" in line 3. There is insufficient antecedent basis for this limitation in the claim.

### ***Claim Rejections - 35 USC § 102***

6. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) and the Intellectual Property and High Technology Technical Amendments Act of 2002 do not apply when the reference is a U.S. patent resulting directly or indirectly from an international application filed before November 29, 2000. Therefore, the prior art date of the reference is determined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

7. Claims 1, 5, and 6 are rejected under 35 U.S.C. 102(e) as being anticipated by U.S. Patent No. 6704421 to Kitamura.

8. Regarding Claims 1 and 6, as best understood with regarding the 112, 2<sup>nd</sup> problem as mention above, Kitamura discloses an audio reproducing apparatus (i.e. automatic multichannel equalization control system for a multimedia computer) comprising: audio reproducing device for reproducing audio information (Fig.1); discriminating device (14) for discriminating sound stream attribute contained in the audio information (i.e. the disc reader 14 is a conventional disc reader that reads header information as preprogrammed on a CD, DVD or other disc)(Fig.1; column 3, lines 26-39; column 8, lines 4-15); storing device (38) for storing frequency character information set corresponding to the sound stream attribute (column 4, lines 47-61; column 5, lines

17-30); renewing device (24) for variably adjusting the frequency character information in accordance with the sound stream attribute discriminated by the discriminating device (Fig. 3; column 4, lines 1-12); and control device (16) for performing a control so that the renewing device can be variably adjusted in accordance with the frequency character information corresponding to the sound stream attribute discriminated by the discriminating device (column 4, lines 13-21; column 5, lines 31-40; column 6, line 64 to column 7, line 32; column 9, lines 5-16), and that the audio reproducing device can output the audio information (Fig. 1). Kitamura also discloses the control device controls the renewing device to renew a frequency character in accordance with combination stored in a selection storing device (column 7, line 33 to column 9, line 30), wherein when a discriminated sound stream attribute is not present in the selection storing device, the control device controls the renewing device to renew a frequency character in accordance with a sound stream attribute and a frequency character stored in the storing device (Fig. 4a).

9. Regarding Claim 5, as best understood with regarding the 112, 2<sup>nd</sup> problem as mention above, Kitamura discloses character storing device for storing a plurality of sound stream attributes and a plurality of frequency characters (38); selecting device for selecting a user's desired combination from the sound stream attributes and the frequency characters; and selection storing device for storing a selected combination (Fig. 4b; column 7, line 33 to column 9, line 30).

***Response to Arguments***

10. Applicant's arguments with respect to claim 1 have been considered but are moot in view of the new ground(s) of rejection.

***Conclusion***

11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Corey P Chau whose telephone number is (703)305-0683. The examiner can normally be reached on Monday - Friday 9:00 am - 5:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tran Sinh can be reached on (703)305-4040. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

March 14, 2005

  
XU MEI  
PRIMARY EXAMINER